

**Comments Received on draft Ventura County MS4 Permit
December 27, 2006**

**From: Mark S. Norris, Assistant Public Works Director
City of Oxnard**

To: RWQCB-LA

Date: March 6, 2007



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March 6, 2007

Mr. Jonathan Bishop, Executive Officer
Regional Water Quality Control Board - Los Angeles
320 West 4th Street, Suite 200
Los Angeles, CA 90013

**DRAFT VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER
SYSTEM PERMIT (NPDES PERMIT No. CAS004002)**

Dear Mr. Bishop:

Thank you for your timely transmittal of the draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit for the Ventura Countywide Stormwater Program. The City of Oxnard is a copermittee on the permit, and staff have worked with other agencies on the development of county-wide comments on the draft permit, and concur with the majority of those comments transmitted to you under separate cover.

In general, though, the draft permit appears to have been written for a highly urbanized, recalcitrant program instead of being a natural progression of the Ventura Countywide Stormwater Program. We have consistently reminded Regional Board staff that Ventura County is very dissimilar to Los Angeles and other highly urbanized counties, as can be seen in the attached picture (Figure 3), courtesy of Google Earth. The unique nature of the county that you also observed in your February 3, 2006, overflight, and the advanced planning efforts of the United States Environmental Protection Agency, State Water Resources Control Board, and the Regional Board staff have not been translated into a meaningful permit that will advance water quality improvements in the watersheds of Ventura County.

The first municipal stormwater permit, issued in 1994, was based on the Part 1 and Part 2 NPDES permit applications developed by the City of Oxnard, as required under the EPA's Phase I stormwater regulations. The remaining agencies in Ventura County did not fall under Phase I, but voluntarily participated in the development of the stormwater program elements on a county-wide basis to better protect surface and groundwater resources (see Figure 1). The logical, proactive approach taken in implementing the stormwater program was recognized by the Regional Board by winning the prestigious H. David Nahai Water Quality Award for Water Quality Conservation in 2001, and by winning the EPA's Clean Water Act Recognition Award for Stormwater Management Excellence in 2003. In the four years since, there has been a shift toward a less flexible

and effective program that has resulted in a dependence on other programs, such as wastewater treatment plant NPDES permits and TMDLs, for improving water quality. In part, this has been due to a willingness on the part of the Ventura Countywide Program to assist the Regional Board in implementing its Watershed Approach. While the Program itself continued to progressively implement more effective best management practices, the monitoring program shifted focus from measuring land use contributions of pollutants of concern to measuring the overall health of the watershed (see Figure 2). While this data has been used by other programs at the Regional Board (e.g., TMDL, Planning, and the Conditional Waiver for Irrigated Agriculture), it is apparent that the information was not used in the development of the draft permit. The 303(d) impairment identification and subsequent TMDL implementation process in Ventura County has been an exemplary example of a successfully adopted and implemented non-point source, pollution control program focused on the specific constituents that impact beneficial uses. This program has been implemented in an allied, cooperative, coordinated manner with the Regional Board serving as a full-partner. This approach has resulted from a unified effort by Regional Board staff with a comprehensive body of stakeholders (including the US-EPA, municipalities, the County, major water suppliers, CalTrans, the Navy, the Ventura County Farm Bureau and other agriculture and environmental interests). These initiatives, implementation schedules, and goals will result in tangible water quality improvements, compliance with Basin Plan objectives, and protection of beneficial uses for Ventura County watersheds with respect to real water quality impairments. The same cannot be said for the draft stormwater permit.

More troubling than the less effective draft stormwater permit is the lack of process in its development. The first stormwater permit for Ventura County followed the June 30, 1994, Basin Plan **Urban Runoff** component and its *Strategic Planning and Implementation* section which states that the "Regional Board's urban runoff management program (through both the Storm Water and Nonpoint source programs) continues to assess specific urban runoff problems and control strategies to remediate those problems." This was done by developing a Monitoring Program that included four types of land use monitoring and implementing a Storm Water Quality Management Plan to address any pollutants of concern. In part, the Ventura Countywide Stormwater Management Program's pollutants of concern were developed in comparing land-use monitoring results to Basin Plan water quality standards. Realistically, these standards were developed to address point source discharges, and probably do not reflect actual urban runoff impairments¹.

The 1994 Basin Plan further defines the stormwater program elements under *Comprehensive Control Program*:

"All cities and counties in the Region are required to develop and implement comprehensive urban runoff control programs which focus on the prevention of future water quality problems and remediation of

¹ September 9, 2005, *Comments on the Use of Numeric Standards for Stormwater Permits* letter

existing problems. The requirements of the municipal control program are intended to be consistent with NPDES regulations for municipal storm water discharges”.

Other than specific limitations for certain industries² (e.g., Subchapter N industries), the NPDES stormwater program is designed to be a tiered approach to mitigating urban runoff impacts that relies on best management practices implemented to the Maximum Extent Practicable (MEP)³. The EPA determined that additional water quality-based controls may be deemed appropriate, where necessary. To date, these additional controls were found appropriate by the Regional Board only at 303(d)-listed waterbodies under a TMDL structure. Co-permittees under the Ventura Countywide Program have been working with other stakeholders in the TMDL development and implementation processes for the various TMDLs where a urban runoff component has been identified. It is apparent from our discussions with the Regional Board's TMDL staff that there has been no discussion of the incorporation of adopted TMDLs into the permit, nor has there been consideration of the existing and proposed TMDL monitoring programs in the development of the draft permit's monitoring program.

Co-permittees under the Ventura Countywide Program have, however, identified needed additional controls using the results of the Stormwater Monitoring Program's data, TMDL monitoring data, and the City of Oxnard's POTW permit monitoring. For the City of Oxnard, these controls include targeting businesses for sources of lead and nitrogen, a very rigorous construction oversight program, and additional source control and treatment controls for trash⁴. In taking this approach, the Program is following the philosophy of the Stormwater Monitoring Coalition (SMC) in their Model Monitoring Program:

“Monitoring should be focused on decision making; data not helpful in making a decision about clearly defined regulatory, management, or technical issues should not be collected.”

The Model Monitoring Program, developed by representatives of three regional boards, municipal permittees representing six counties, Heal the Bay, and SCCWRP presented the Core Management Questions:

Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
What is the extent and magnitude of the current or potential receiving water problems?
What is the relative urban runoff contribution to the receiving water problem(s)?
What are the sources to urban runoff that contribute to receiving water problems?

² May 10, 2006, *Boeing Company – Petition for Review of Waste Discharge Requirements* letter

³ Federal Register / Vol. 55, No. 222 / Friday, November 16, 1990

⁴ January 26, 2006, *Permit Renewal – Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges* letter

Are conditions in receiving waters getting better or worse?

These questions were incorporated as the means for measurability and accountability of stormwater programs suggested by the California Stormwater Quality Association (CASQA) in their white paper *"An Introduction to Stormwater Program Effectiveness Assessment"*. In making Oxnard city-specific comments, we will refer back to the above process, and request that Regional Board staff justify in the permit staff report deviation from the stakeholder-developed approach in which they participated:

- ❖ Page 1, A. 1 and Page 11, D.2. (Findings) - Permittees "...have joined together to form the Ventura Countywide Storm Water Quality Management Program to discharge wastes." We actually joined to implement the stormwater program throughout the urbanized areas of the County, not to discharge waste. Non-urban areas have been addressed by the Program where water quality impacts have been observed.
- ❖ Page 12, E. 4 (Findings) - "The Porter-Cologne Water Quality Control Act ... authorizes the State Water Resources Control Board (State Water Board), through the Regional Water Boards, to regulate and control the discharge of pollutants into waters of the State and tributaries thereto." Not only is the tributary rule not defined⁵, but the definition of Waters of the State would be all-encompassing anyway. Waters of the State covers all surface and groundwater within the State, and does not exclude treatment devices (grassy swale, constructed wetlands, etc.) or disconnected surface MS4 features (e.g., curb and gutter)⁶. It would aid the Program implementation if the management questions could have a more limited focus, such as Waters of the United States. Additionally, while Porter-Cologne authorizes the State to assume the delegated NPDES program, it does not allow further delegation of the program to local agencies. There are many requirements in the draft permit where this is the case, and those requirements should be deleted.
- ❖ Page 21, F. 4 (Findings) - "...the Permittees shall implement *all necessary control measures* to reduce pollutants..." This statement goes well beyond MEP. Additionally "Successful efforts to reverse the wet weather impairments..." is not possible until critical regulatory tools are developed, including wet weather water quality objectives, consideration of potential groundwater impacts, and "design storm" standards.⁷

⁵ August 10, 2004, letter regarding the 2004 Triennial Review; and the March 30, 2005 comment letter on the Draft Tentative Conditional Waiver for Discharges from Irrigated Land

⁶ December 8, 2006, Preliminary Comments on the Proposed Trash TMDL for Selected Waterbodies in Ventura County letter

⁷ September 9, 2005, Comments on the Use of Numeric Standards for Stormwater Permits, and May 10, 2006, Boeing Company – Petition for Review of Waste Discharge Requirements

- ❖ Page 22, F. 8 (Findings) - "This Order also provides flexibility for Permittees to petition the Regional Water Board Executive Officer to substitute a BMP under this Order with an alternative BMP..." Many of the BMPs currently used (especially post-construction) are not contained in the Order. Are they approved/disapproved retroactively? In not considering the existing controls to address known impacts currently implemented under the stormwater and TMDL programs, Regional Board staff will redirect resources from successful management practices that have multiple benefits to management practices that are not site-specific, and may actually have a deleterious effect.
- ❖ Page 26, Part 1.A.3 - "Discharges to the MS4 not covered by an NPDES individual or general permit are prohibited." The City owns and/or operates portions of the MS4 that receive agricultural runoff, which is exempt from NPDES permitting. We would not be able to meet this requirement⁸.
- ❖ Page 29, Part 2.3, Footnote 1 - "...two or more exceedences of a Municipal Action Level (MAL) will create a presumption that the implementation of measures to reduce the pollutant(s) in MS4 discharges to MEP are inadequate." The proposed MALs are not designed to address Ventura County watershed-specific concerns. Additionally, the proposed MALs are designed to be end-of-pipe triggers, but are contained in the *Receiving Water* section. Development of a Statewide Stormwater Policy would help in defining the eventual inclusion of MALs in permits.^{7,9}
- ❖ Page 49, (4) - "Support of Regional Water Board Enforcement Actions:..." There have been cases where city staff have arrived at a different interpretation on the application of the industrial and construction general permit requirements. It would not be feasible to make a permit requirement that staff then agree and support Regional Board staff.
- ❖ Page 50, E - "Planning and Land Development Program" - The requirements of this section appear to have been taken, out of context, from other programs. These programs, such as Contra Costa in Northern California, have elements that address urbanization by a menu of possible strategies, including Low Impact Development, numeric hydromodification criteria, and treatment controls and monitoring. The draft permit attempts to implement all of these strategies for all new development, redevelopment, and municipal projects. This is not possible, and the tentative permit should reflect a more workable program.

⁸ March 30, 2005, comment letter on the *Draft Tentative Conditional Waiver - Waste Discharge Requirements for Discharges from Irrigated Land*

⁹ January 26, 2006, *Permit Renewal - Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges* letter

- ❖ Page 105, Part 7, Runoff - "**Runoff** – means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. It is typically comprised of nuisance flows contaminated with pollutants." To define runoff in such a manner is bound to cause confusion. The *Water Quality Control Plan* for the Los Angeles region (Basin Plan) contains the following definitions: "Storm water runoff is runoff from land surfaces that flows into storm drains or directly into natural waterbodies during rainfall; storm water discharges include flow through pipes and channels or sheet flow over a surface." Definitions should be consistent to the extent possible.

Additionally, receiving water is not defined, and should be added to the definitions section.

In summary, the draft municipal permit was not designed to implement an effective stormwater program, was not designed to integrate with existing TMDL or non-point source programs, was not developed in a stakeholder process, and did not follow recognized strategies instituted by the federal regulations, EPA guidance, State Water Resources Control Board draft policy, or the Regional Board's own Basin Plan. As always, we are interested in working with Regional Board staff on building a program that will be successful in maintaining or improving water quality in Ventura County.

If you have any questions regarding our comments on the draft stormwater permit, please feel free to call me at (805) 271-2205, or contact Mark Pumford, Technical Services Manager, at (805) 271-2220.

Sincerely,



Mark S. Norris
Assistant Public Works Director


MSN:MP:ss

- c: Wendy Phillips, Regional Water Quality Control Board – Los Angeles
Xavier Swamikannu, Regional Water Quality Control Board – Los Angeles

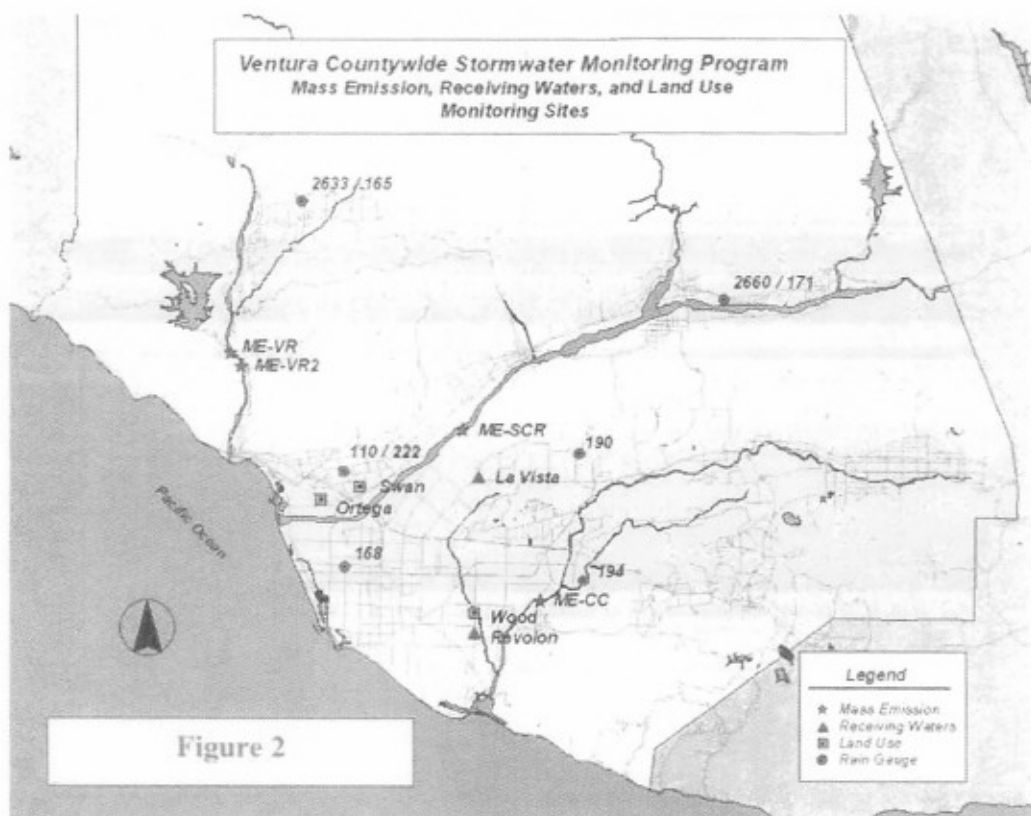
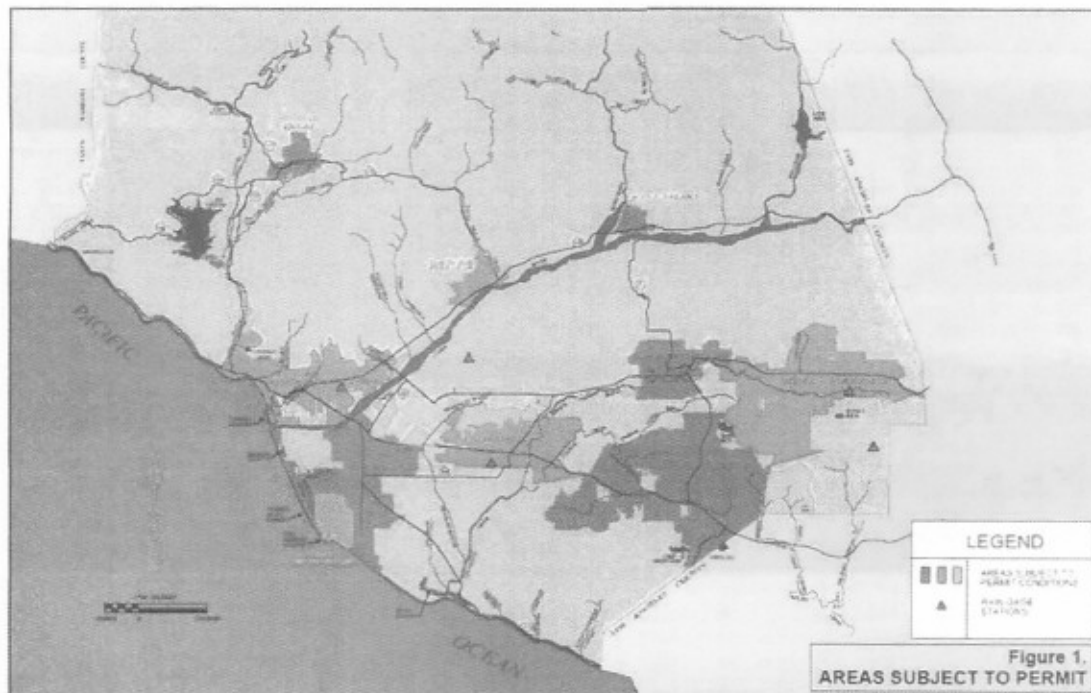


FIGURE 3

